IN THE

Supreme Court of the United States

October Term, 1975

No. 75-599

APPALACHIAN POWER COMPANY,
Appellant,

v.

THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM

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Introduction

Appalachian Power Company ("Appalachian", "Company" or "Appellant") filed its Jurisdictional Statement in this proceeding on October 21, 1975. Appalachian appeals from orders of the Supreme Court of Appeals of West Virginia ("West Virginia Court") upholding certain orders of The Public Service Commission of West Virginia ("Commission" or "Appellee") establishing rates applicable to Appellant's sales of electric energy to its utility customers. On November 28, 1975, Appellee filed its Motion to Dismiss or Affirm ("Motion to Dismiss"). This Brief in Opposition demonstrates the gross misapprehensions of Appellee's Motion to Dismiss by considering each of the captioned points of Appellee's argument.

ARGUMENT

I.

Appellant's Constitutional Rights are Violated When Rates Established for the Period July 29, 1971 through December 31, 1973 Would Have Been Inadequate to Attract Capital.

Two arguments are interwoven in Point I of Appellee's Motion to Dismiss.[1] First, the Commission argues that any contention that the rates ordered by the Commission were inadequate to permit Appalachian to attract capital between July 29, 1971 and December 31, 1973 (the "Refund Period") is obviated by the fact that the Company actually attracted capital during that period. Second, the Commission argues that the Company has had the opportunity to present evidence of its actual earnings for the Refund Period and now must bear the consequences of its failure to do so. We consider these arguments separately.

A. The Constitutional Requirement that Rates Be Sufficient to Permit Appalachian to Attract Capital is Not Satisfied by the Fact that it was Able to Attract Capital on the Strength of Earnings it now is Ordered to Refund.

Appellee professes that it can ignore whether the rates which it establishes for the Refund Period are adequate for Appalachian ". . . to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its duties"[2] for the simple reason that Appalachian ". . . was able to attract capital during 1971-1974".[3]

1. Motion to Dismiss, pp. 4-12.

2. *Bluefield Water Works & Improvement Company* v. *Public Service Commission of West Virginia*, 262 U.S. 679, 693 (1923).

3. Motion to Dismiss, p. 5.

By this seemingly innocuous statement, Appellee would corrupt basic constitutional standards of reasonable utility rates which have been the keystone of public utility regulation for more than half a century. This Court has said:

> "The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties." *Bluefield Water Works & Improvement Company* v. *Public Service Commission of West Virginia*, *supra*, p. 693.

The Commission, believing the fact that Appalachian was able to attract capital between 1971 and 1974 is dispositive of the constitutional issues in this case, is now effectively saying:

> The return *subject to refund* should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate . . . to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

Such a distortion of the basic constitutional standard requiring a fair return and rates which permit the attraction of capital by itself raises a substantial question which warrants the exercise of this Court's jurisdiction. Rates which served as the basis for the attraction of capital in 1971-1973 but which were revoked four years later and replaced by much lower rates cannot now serve to justify the constitutionality of the lower final rates.

Similarly, Appellee relies upon *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U.S. 575 (1942):

> "'. . . [I]f the rate permits the company to operate successfully and to attract capital all questions as to

> "just and reasonable" are at an end so far as the investor interest is concerned.'" Motion to Dismiss, p. 5.

In fact, of course, Appellee has no knowledge of whether the rates it finally ordered would have permitted Appalachian to attract capital during the Refund Period. The thrust of Appellee's theory of regulation is that if the rate *subject to refund* permitted Appalachian to attract capital all questions as to justness and reasonableness are at an end so far as the investor interest is concerned.

The Commission's unconstitutional theory of regulation is dramatically shown by its reference to Appalachian's $50 million debt financing in February 1974. Appellee's Motion has stated that the Company's pro forma interest coverage for that financing was 2.09 times.[4] What is left unsaid by the Commission is that if the rates now ordered by the Commission had actually been in effect, pro forma interest coverage would have been less than 1.88 times and the financing could not have been legally consummated.[5]

In seeking to justify its approach the Commission erroneously contends

> ". . .there is not the slightest suggestion in the record that the finally approved rates for 1971 through 1973 were not 'sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital' during that period. *FPC*

4. Id., p. 5, n.12.

5. Even a bare minimum indenture coverage of 2.00 times annualized interest requirements or a slim additional margin would be inadequate. Two times coverage is not an appropriate level of coverage and will not maintain the financial integrity of the Company. It is only a requirement below which *no* additional long-term debt may be issued. As Jerome S. Katzin, a special partner in the investment banking firm of Kuhn, Loeb & Co., New York City, testified on March 7, 1975:

> "That is why when a company scrapes bottom with a two times coverage on existing obligations, it is in a critical and vulnerable position. Its viability as a public service corporation is endangered." (Tr. March 7, 1975, p. 34.)

> v. *Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944)". Motion to Dismiss, p. 5.

Here Appellee conveniently ignores Appalachian's "Petition for Rehearing, Reopening of the Record, and Reargument" filed with the Commission on February 7, 1975 in which Appalachian stated:

> "In the rehearing, Appalachian intends to present evidence as to the actual results for the intervening period which will demonstrate that those results, including the entire amount collected under bond, were not inconsistent with the fundamental constitutional criteria set forth in the *Hope* case. Appalachian also will present evidence that an increase of only $1,321,522 based on 1970 test year results is confiscatory as applied to Appalachian in the intervening years." Petition for Rehearing, etc., pp. 5-6.

The requested opportunity to present such evidence at a rehearing was denied by the Commission, notwithstanding its recognition that the Company's coverage of annualized interest expense at the end of 1972 and 1973 fell below 2.00 times in the absence of any rate increase.[6] This fact alone should have attracted responsible regulatory concern as to the adequacy of a mere 1.5% increase to permit Appalachian to attract capital.

What Appalachian has sought to do in these proceedings is to obtain the opportunity to present evidence of its actual earnings during the Refund Period for the Commission's consideration.[7] That evidence, in Appalachian's view,

6. Appendix, p. 46.

7. Appellee erroneously suggests that reopening the record for the Refund Period would virtually "guarantee" Appalachian's earnings at a specific level. Motion to Dismiss, p. 11. Appalachian has never sought a guarantee. Rather the Company seeks only the opportunity to introduce evidence of its actual earnings in West Virginia during the Refund Period for the Commission's review.

The Motion to Dismiss also makes reference at page 6 to Appalachian's failure to obtain rate relief in Virginia during the period in question. The present proceeding involves a fair return to Appalachian on its utility properties in West Virginia, not in Virginia.

will confirm that the rates ordered by the Commission during the Refund Period are inconsistent with the constitutional criteria set forth in *Bluefield Water Works & Improvement Company* v. *Public Service Commission of West Virginia, supra.*

B. Appalachian Has Not Been Afforded an Opportunity To Present Evidence of Its Actual Earnings for the Refund Period.

At several points in its Motion to Dismiss, Appellee argues that Appalachian had the opportunity to present the evidence which it now seeks to present and it must now bear the consequences--presumably even to the extent of unconstitutional rates—of its failure to do so. We consider these alleged opportunities both before and after the Commission's decision of January 31, 1975.

Appellee suggests that "'. . . at the time of the 1973 hearing, Appalachian could have elected to prove its case by using 1971, 1972, or a twelve-month period ending in early 1973, or some other appropriate twelve months' period to be chosen as a representative test period.'"[8] It should be sufficient to point out that the first evidentiary hearing in this proceeding took place on April 9, 1973, more than 25 months after the Company had applied for increased rates on February 22, 1971. The Company understandably at that time was ill-disposed to extend what already had been an unconscionable administrative delay by the introduction of wholly new test-year evidence. Appellee now informs the Court and the Company that the Company was "virtually invited" to present updated evidence at a hearing held December 10, 1974, almost 46 months after it filed its application for a rate increase.[9] If the "virtual invitation" was extended on December 10, 1974,

8. Motion to Dismiss, p. 7.
9. Id., p. 7.

one is properly perplexed as to why it was so steadfastly withdrawn when urged upon the Commission two months later in the proceedings following the Commission's January 31, 1975 order.

The Commission also suggests that in the post decisional process Appalachian has failed to avail itself of the opportunity to present evidence of its actual earnings for the Refund Period.[10] It is a complete answer to point out that the Company was never afforded such an opportunity although it sought such relief in its petition for rehearing. The Commission's order of February 14, 1975 merely scheduled a hearing for oral argument, not an evidentiary hearing. Indeed the Commission has described this hearing:

> "The purpose of these post-decisional proceedings was to permit the Commission to decide whether or not, and to what extent, to grant relief as prayed for in Appalachian's two petitions for rehearing."[11]

Surely if the proceedings were, by the Commission's words, limited to deciding ". . . whether or not, and to what extent, to grant relief as prayed for . . .", Appalachian cannot now be faulted for refraining from the introduction of evidence which is the only relief it sought. It is with poor grace that the Commission states it ". . . gave [Appalachian] the opportunity to 'spread the facts of the lag period upon the record . . .'",[12] when in fact the Commission did no more than hold proceedings which considered and denied Appalachian's request for an opportunity to present such facts.

The Commission also seeks to justify its refusal to consider evidence of Appalachian's actual earnings for the Refund Period because this Court has declined "'. . . to require reopening of the record, except in the most extraordinary circumstances.' *Bowman Transportation, Inc.* v. *Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 296 (1974). . . ."[13] The Commission's limitation of reopening

10. Id., p. 9.
11. Appendix, p. 63. (Commission Order of March 21, 1975).
12. Motion to Dismiss, p. 11.
13. Id., p. 9.

the record only for the period subsequent to January 1, 1974 is, by itself, strong evidence of the extraordinary circumstances which surrounded this case. The selection of the cut-off date January 1, 1974 is arbitrary and without any evidentiary support. At the time of its order of March 21, 1975 the Commission was just as uninformed as to the reasonableness of the Company's actual earnings for the period subsequent to January 1, 1974 as it was for the immediately preceding Refund Period.

Comparison of the reason for delays encountered in this proceeding with those in *Bowman, supra,* as shown below, confirms that Appellee's reliance on that case is inapposite.[14] This Court reasonably concluded in *Bowman* that

> "The protracted character of the proceedings resulted, not from *bureaucratic inertia,* but from the number and complexity of the issues and from the agency procedures that extended to the parties, in an effort to insure fairness in appearance as well as reality, and an opportunity to comment upon the proceedings at every stage." *Bowman, supra,* at p. 296. (Emphasis added)

There of course were no time consuming examiners' opinions in Appalachian's case in contrast to *Bowman*—the record was made before the Commission and the Commission issued the only decision. If ever there were an instance of unexplained and inexplicable bureaucratic inertia, this is it. Moreover, this is not the typical rate case situation contemplated by *Interstate Commerce Commission* v. *Jersey City,* 322 U.S. 503 (1944), where future relief can be obtained by

14.

	Bowman	*Appalachian*
Hearing days	150	6
Witnesses	950	9
Transcript	23,423 pages	775 pages
Exhibits	1,989	50
Applicants	10	1
Protestants	66	5

a new rate filing. Appalachian is being ordered to pay out refunds which once paid can never be recovered.

The unconscionable bureaucratic inertia in this proceeding coupled with refunds based on the apparent unconstitutional rates ordered by the Commission renders the instant proceeding an extraordinary one which necessitates reopening the record.

II.

Staff Counsel's Dual Role has Tainted these Proceedings in Violation of Appalachian's Right to Due Process of Law.

Appellee asserts that the dual role[15] of its counsel McDonald in this proceeding has created neither prejudice nor impropriety in this case, notwithstanding the fact that before joining the Commission's staff and signing solely by himself its brief in this case, he engaged in more than 140 transcript pages of cross-examination of Appalachian's witnesses and adduced evidence on behalf of parties substantially opposed to Appalachian's requested rate increase. Clearly such conduct by Staff Counsel is inconsistent with the Commission's stated concern "to preserve the public confidence" in the Commission and the distributive justice to which it aspires.[16] The fact that Mr. McDonald did not participate in cross-examination of the staff's accounting witnesses is of no relevance; he joined the staff a few days before that cross-examination took place.

The palpable impropriety of Mr. McDonald's conduct is not excused by the statement of Appalachian's trial counsel that he personally didn't "think there was any wrong

15. Appellant objects to attorney McDonald's now assuming yet another role in this proceeding—that of counsel for the Commission. He has therefore assumed at least three different roles—counsel for two intervenors, counsel for the Commission staff, and counsel for the Commission on this appeal.

16. Appendix, p. 13.

done by Mr. McDonald", emphasizing, however, in telephone conversations he had with the then commissioners that "I had only considered it in a personal matter. . . ."[17] Whatever may have been trial counsel's personal point of view, he stated:

> "I did not think that I was making any agreement that would bind my clients and I know I made that clear to [at least one of the Commissioners] but I don't think we ever formally discussed it on the record or as something involved in the case. . . ." Transcript of March 7, 1975, pp. 11-12.

Appellee argues that the actions of Appalachian's trial counsel amounted to a waiver of Appellant's rights arising out of attorney McDonald's conduct.[18] It should be clearly understood that Appalachian's trial counsel was never authorized to waive in any way the rights or remedies available to Appalachian as a result of attorney McDonald's conduct. If trial counsel had intended to bind his client or if it reasonably could be inferred from his remarks that he had so intended, his action would have amounted to a breach of his obligations to his client under the attorney-client relationship. But in any event, trial counsel's express words quoted above demonstrate that he in no way intended to bind his client. Even if he had intended to bind his client to waive its rights, he was incapable of doing so under the law.

> "Authority to waive a substantial right of the client cannot be implied from the mere relationship of attorney and client." *Bommarito* v. *Southern Canning Co.*, 208 F. 2d 56, 60-61 (8th Cir. 1953); see also, *Himmelfarb* v. *United States*, 175 F. 2d 924, 931 (9th Cir. 1949) *cert. denied*, 338 U.S. 860 (1949).

17. Transcript of March 7, 1975, p. 12.
18. Motion to Dismiss, p. 13.

The cases are clear that counsel cannot expressly, or by laches impliedly, waive the Canon standards *because* of the public interest involved, *because* of the Court's responsibilities in these matters, and *because* a client's substantial legal rights are involved. *Emle Industries, Inc.* v. *Patentex, Inc.*, 478 F.2d 562, 574 (2d Cir. 1973); *Empire Linotype School, Inc.* v. *United States*, 143 F. Supp. 627, 631 (S.D.N.Y. 1956); and *United States* v. *Standard Oil Company*, 136 F. Supp. 345, 351 n. 6 (S.D.N.Y. 1955).

The fact that Appalachian first raised the issue of Mr. McDonald's dual role by petition filed February 7, 1975 is of no significance because it has been held that "[t]he Court's duty and power to regulate the conduct of attorneys practicing before it, in accordance with the [American Bar Association] Canons, cannot be defeated by the laches of a private party or complainant." *Empire Linotype School, Inc.* v. *United States, supra*, p. 631.

Though Appalachian has repeatedly alluded to the impropriety of Mr. McDonald's conduct in this case, Appellee claims that

> "At no time has Appalachian suggested that there was any breach of the attorney-client relationship in counsel's role, or that there has been a violation of the letter or spirit of the Code of Professional Responsibility or Disciplinary Rules. . . ." Motion to Dismiss, p. 13.

The record before this court should reflect that, on the contrary, Appalachian stated in its April 7, 1975 petition to the West Virginia Court for suspension of the Commission's orders in question that ". . . Appalachian believes [the conduct of Mr. McDonald in this case] is in contravention of minimum standards applicable to members of the Bar."[19]

19. Petition of April 7, 1975, p. 7.

Staff Counsel for the Commission, who participated in the proceeding before the Commission on behalf of private clients, should not be permitted to take on substantial responsibilities for the Commission in these same proceedings upon becoming a Commission employee. Though the measure of prejudice imposed on the proceeding cannot be quantified, at the very least, such conduct creates the appearance of impropriety in violation of Appalachian's right to procedural due process of law.

III.

The Commission's Interim Order of September 16, 1974 and Denial of Rehearing October 18, 1974 Deprived Appalachian of its Property without Due Process of Law and this Appeal is Timely Taken.

The Commission's September 16, 1974 order directed Appalachian to cease and desist immediately ". . . its practice of 'repricing' coal purchased from affiliated interests for inclusion in the Fuel Adjustment Clause. . . ."[20] The Commission's October 18, 1974 order denied Appalachian's Petition for Suspension and Reconsideration.

Though Appalachian clearly stated that its objection to these orders rests on failure to afford prior notice and

20. Appendix, p. 1. The Commission's Motion to Dismiss recites that the Company "repriced its captive coal up to market"; that the staff had "discovered these facts during its investigations"; and alleges that Appalachian "did not sustain its burden of proving that the practice engaged in was reasonable or lawful." Motion to Dismiss, pp. 14-15. The term "repricing" in this context cannotes wrongdoing; a staff discovery made "during investigation" suggests cover-up and illegality; and the allegation made that the Company had not sustained its burden of proving the lawfulness of its practice expresses a Commission attitude that what the Company had been doing was unlawful. Quite the contrary, the Company engaged in no unlawful practice: it make no cover-up; it was not involved in any wrongdoing. The Company followed exactly what the Fuel Adjustment Clause in its filed tariff required; it made monthly reports to the Commission; and it based the price of coal from affiliated sources "solely on purchases from non-affiliated mines", as its Fuel Adjustment Clause required.

opportunity to be heard,[21] the Motion to Dismiss does not contest the fact that the Commission's cease and desist order was issued without such prior notice or opportunity to be heard. Instead, Appellee contends that Appalachian was not deprived of property by the order because no refunds were required. Such a conclusion is utterly untenable because the order reduced the amount of the Company's recovery through its duly filed Fuel Adjustment Clause. A clear deprivation of property without due process of law was the inevitable result.

Appellee asserts that Appalachian failed to take timely appeal from the September 16, 1974 order and is therefore bound by the Commission's action.[22] This presumes the September 16, 1974 order (which was to continue in effect ". . . until further order of the Commission."[23]) was a final and appealable order. But, the Commission has itself characterized that mandate as an "interim modification of Appalachian's fuel adjustment clause"[24], and, on October 18, 1974, it characterized the September 16 order as stating ". . . that further investigation and review will be made of Applicant's practice of 'repricing' coal purchased from affiliated interests. . . ."[25] The denial of rehearing on October 18, 1974 with respect to the "interim modification" can have no effect upon the non-appealability of the September 16, 1974 order. Only by the Commission's order of March 21, 1975 did the issue become ripe for appeal; and it has been duly preserved.

21. Jurisdictional Statement, p. 36.
22. Motion to Dismiss, p. 16.
23. Appendix, p. 2.
24. Appendix, p. 57 (Commission's order of February 14, 1975).
25. Id., p. 3.

IV.

West Virginia Code, Chapter 24, Article 5, Section 1, is Repugnant to the Constitution of the United States as Applied herein; The Question was Timely Raised.

Appellee mistakenly asserts that Appalachian failed to raise in a timely manner the question of the constitutionality of West Virginia Code, Chapter 24, Article 5, Section 1. To the contrary, Appalachian stated in its Brief in Support of Motion for Reconsideration . . . and Petition for Rehearing filed with the West Virginia Court on July 23, 1975:

> "If this Court construes West Virginia Code § 24-5-1 to provide for review of orders of the Public Service Commission only as a matter of discretion under the facts of this case, then Appalachian believes that the statute so construed is in violation of the Due Process Clause of the United States Constitution." Petitioner's Brief in Support of Motion for Reconsideration . . . and Petition for Rehearing dated July 23, 1975, pp. 9-10.

The motion and petition and the supporting brief were timely filed within thirty days after the June 23, 1975 decision complained of in accordance with Rule XIII—Rehearing of the West Virginia Court's Rules of Practice.[26]

Moreover, Appalachian properly preserved the question through filing on October 14, 1975 the Notice of Appeal by which this appeal is intended to be taken. The filing was made within 90 days of the West Virginia Court's order denying Appalachian's motion for reconsideration and petition for rehearing, and it is clearly settled that when a request for rehearing is timely made, the time within which

26. Appendix, p. 97.

the Notice of Appeal must be filed does not commence until the finality of the order appealed from is established by denial of the request. *Department of Banking of Nebraska* v. *Pink*, 317 U.S. 264, 266 (1942).

Appellee further suggests that rehearing of the West Virginia Court's June 23, 1975 order under its Rule XIII—Rehearing is not available upon an order *denying* review by that Court and that the request for such rehearing did not suspend the finality of the June 23, 1975 order. Appellee's theory for this result is based on the novel supposition, made without any cited authority, that a request for rehearing of the West Virginia Court's *denial* of a petition for review of the Commission's order is not within the purview of the West Virginia Court's Rule XIII, though Appellee implies that request for rehearing on a *grant* of such petition for review would be proper. Certainly the fact that neither "reargument" nor "notice" thereof occurred in the present case is irrelevant because such events are provided by Rule XIII only where "rehearing is allowed", whereas in the present case rehearing was denied. Accordingly, the only reasonable interpretation is that the timely request for rehearing suspended the finality of the West Virginia Court's June 23, 1975 order until denial of the request by its order of July 29, 1975, and the Notice of Appeal filed October 14, 1975 (less than 90 days after July 29, 1975) properly preserved for this appeal the issue of the unconstitutionality of West Virginia Code, Chapter 24, Article 5, Section 1.

Appellee's further contentions respecting this question are not supported by the authority cited. Citing *Alabama Public Service Commission* v. *Southern Ry.*, 341 U.S. 341 (1951), Appellee states that

> ". . . the mere fact that the statute permits discretionary rather than mandatory review of a Commission rate order does not render it constitutionally defective. . .,"[27]

27. Motion to Dismiss, p. 17.

yet that case involved a statute where ". . . appeal from any final order of the Commission . . . [existed] as a matter of right."[28] Similarly, citing *Preston County Light and Power Company* v. *Public Service Commission of West Virginia*, 297 F. Supp. 759, 766 (S.D. W. Va. 1969), Appellee claims that a challenge to West Virginia Code, Chapter 24, Article 5, Section 1, has been "rejected by a federal court,"[29] yet that case was denied on the basis of the Johnson Act,[30] a statute which is inapplicable to this case.

West Virginia Code, Chapter 24, Article 5, Section 1, as applied in this case to deny Appalachian any forum for presenting its constitutional challenges to the instant rates promulgated by the Commission is repugnant to the Constitution of the United States and therefore void.

Conclusion

The Commission's January 31, 1975 order already has had an extremely severe impact on Appalachian's ability to finance. An immediate result of the order was a reduction in the Company's first mortgage bond rating from A to Baa,[31] restricting access to the capital markets and substantially increasing the Company's cost of capital. The Company's financing alternatives, its ability to sell its securities, and hence its financial integrity and ability to continue to render satisfactory utility service have been, and continue to be, seriously endangered by the Commission's order.

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28. *Alabama Public Service Commission* v. *Southern Ry., supra*, p. 348.

29. Motion to Dismiss, p. 18.

30. 28 U.S.C. § 1342. The Johnson Act severely limits the jurisdiction of Federal District Courts to review orders "affecting rates chargeable by a public utility and made by a State administrative agency. . . ."

31. Jurisdictional Statement, p. 8, n.5.

Although the "capital attraction" issue in this proceeding focuses upon those provisions of the January 31 order which would require the Company to refund more than $23 million without affording any opportunity to present evidence of the actual results of the Company's operations and its ability to attract capital during 1971-1973, Appalachian's *present* ability to finance should not be further jeopardized by denying it even the right to demonstrate the confiscatory nature of the rates finally imposed on the Company by the Commission in 1975 applicable to the years 1971-1973. Current investor perception of the Company's securities surely has been marred by the Commission's order and refusal to reopen the record on the years 1971-1973.

This Court should deny Appellee's Motion to Dismiss, and note probable jurisdiction, or, in the alternative, vacate the final orders appealed from and remand the case for the taking of evidence of Appellant's actual results from July 29, 1971 through December 31, 1973 and for decision thereon; and this Court should grant Appellant such further relief as it may deem appropriate.

Respectfully submitted,

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